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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

CHILDREN'S HEALTH DEFENSE, a Georgia non-  
profit organization,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation; MARK  
ZUCKERBERG, a California resident; SCIENCE  
FEEDBACK, a French corporation; POYNTER  
INSTITUTE, a Florida corporation; and DOES 1-20.

Defendants.

Case No.: 3:20-cv-05787-SI

**DEFENDANT THE POYNTER  
INSTITUTE FOR MEDIA STUDIES,  
INC.'S REQUEST FOR JUDICIAL  
NOTICE OF EXHIBITS A & B IN  
SUPPORT OF MOTION TO DISMISS  
VERIFIED COMPLAINT**

DATE: FEBRUARY 5, 2021

TIME: 10:00 A.M.

COURTROOM: 1-17TH FLOOR

## REQUEST FOR JUDICIAL NOTICE

### **I. INTRODUCTION**

Defendant The Poynter Institute for Media Studies, Inc. (“Poynter,” and incorrectly sued as the Poynter Institute) respectfully requests, pursuant to Federal Rules of Evidence 201(b) and (d), that this Court take judicial notice of (1) the PolitiFact<sup>1</sup> fact-check article referenced and at issue in Plaintiff’s Verified Complaint, and (2) the Collective Evolution article that was the subject of PolitiFact fact-check article, also referenced and at issue in the Verified Complaint. The PolitiFact fact-check article and Collective Evolution article are attached to this notice at **Exhibits A and B**, respectively.

### **II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE PUBLICATIONS AT ISSUE.**

Federal Rule of Evidence 201(b) provides that facts are subject to judicial notice where they are “not subject to reasonable dispute in that [they are] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Federal Rule of Evidence 201(d) states that “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.”

In ruling on a motion to dismiss, a court may take judicial notice of items and documents outside the pleadings when such items are referenced in the complaint. *See, e.g., Knievel v. ESPN*, 393 F.3d 1068, 1076-77 (9th Cir. 2005) (on motion to dismiss, taking judicial notice of entire news article at issue in defamation claim where Plaintiff referenced only portion of the same in complaint, remainder was properly incorporated by reference) (*citing Horsley v. Feldt*, 304 F.3d 1125, 1135 (11th Cir. 2002)); *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (“a court may consider material which is properly submitted as part of the complaint on a motion to dismiss

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<sup>1</sup> PolitiFact is a branded news fact-checking service operated by Poynter.

without converting the motion to dismiss into a motion for summary judgment . . . [and] [i]f the documents are not physically attached to the complaint, they may be considered if the documents' authenticity . . . is not contested and the plaintiff's complaint necessarily relies on them.") (quotations omitted); *Malley v. San Jose Midtown Dev. LLC*, No. 5:20-cv-01925, 2020 WL 5877575, at \*3 (N.D. Cal. Oct. 2, 2020) ("[t]he incorporation by reference doctrine allows the Court to consider documents that are extensively referred to in the complaint or that form the basis of the plaintiff's claims."); *Monachelli v. Hortonworks, Inc.*, 225 F. Supp. 3d 1045, 1055 n.1 (N.D. Cal. 2016) (courts may take notice of matters outside the pleadings on a motion to dismiss where they are central to the claims); *Zella v. The E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1128 (C.D. Cal. 2007) ("a court may consider documents which are not physically attached to the complaint but 'whose contents are alleged in [the] complaint and whose authenticity no party questions.'").

Here, because Plaintiff directly references the PolitiFact fact-check article (along with the underlying Collective Evolution article) and it constitutes the alleged basis for naming Poynter in this action, judicial notice of those materials is appropriate. *See* Verified Complaint, Doc. 1 at ¶¶ 89-93. The articles attached at **Exhibits A** and **B** and their contents are not subject to reasonable dispute and are capable of accurate and ready determination.

Accordingly, Poynter respectfully requests that the Court take judicial notice of the attached exhibits.

Dated: October 23, 2020

**JASSY VICK CAROLAN LLP**

By: /s/ Kevin L. Vick  
KEVIN L. VICK

**THOMAS & LOCICERO PL**

By: /s/ Carol Jean LoCicero  
CAROL JEAN LOCICERO

**DECLARATION OF BERNIE J. BRENNAN**

I, Bernie J. Brennan, declare as follows:

1. I am a legal assistant/paralegal in the law firm of Thomas & LoCicero PL, which, along with Jassy Vick Carolan LLP, is counsel of record for Defendant The Poynter Institute for Media Studies, Inc. in the matter *Children's Health Defense v. Facebook, Inc., et al.*, United States District Court for the Northern District of California, Case No. 3:20-cv-05787-SI. Unless otherwise stated, I have personal knowledge of the following facts.

2. On October 19, 2020, I accessed the PolitiFact website at the following address:

<https://www.politifact.com/factchecks/2020/jul/16/facebook-posts/2017-18-flu-season-study-does-not-include-covid-19/>.

3. **Exhibit A**, submitted concurrently with this Declaration, is a true and correct screenshot copy of the fact-check article located at the web address referenced in Paragraph 2 of this Declaration.

4. On October 19, 2020, I accessed the Collective Evolution website at the following address:

<https://www.collective-evolution.com/2020/04/16/study-the-flu-vaccine-is-significantly-associated-with-an-increased-risk-of-coronaviruses-not-covid19/>.

5. **Exhibit B**, submitted concurrently with this Declaration, is a true and correct screenshot copy of the article located at the web address referenced in Paragraph 4 of this Declaration.

Executed this 23rd day of October, 2020, at Fort Lauderdale, Florida.

  
Bernie J. Brennan

# EXHIBIT A

ul/16/facebook-posts/2017-18-flu-season-study-does-not-include-covid-19/



## Facebook posts

stated on April 16, 2020 in a media website:

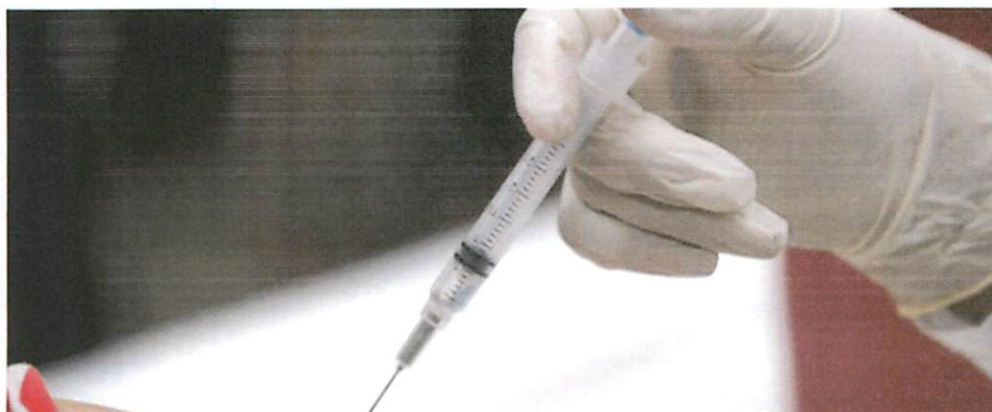
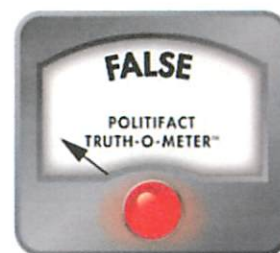
**"New study: The flu vaccine is 'significantly associated' with an increased risk of coronavirus"**

PUBLIC HEALTH

FACEBOOK FACT-CHECKS

CORONAVIRUS

🔍 FACEBOOK POSTS





/factchecks/2020/jul/16/facebook-posts/2017-18-flu-season-study-does-not-include-covid-19/

**POLITIFACT**  
The Poynter Institute



This Jan. 23, 2020 file photo shows a patient receiving a flu vaccination in Mesquite, Texas. (AP Photo)



By **Emily Venezky**  
July 16, 2020

## This 2017-18 flu season study does not include COVID-19

IF YOUR TIME IS SHORT



k-posts/2017-18-flu-season-study-does-not-include-covid-19/



## IF YOUR TIME IS SHORT

- The study featured in the article is from 2019 and the data for it was collected in 2017-18, so it doesn't include COVID-19 information.
- In past fact-checks, experts said this connection between the flu vaccine and other viruses is still speculative.

**[See the sources for this fact-check](#)**

We have [debunked plenty](#) of [misinformation](#) about vaccines for COVID-19 that are in development. Next up: more false information tying COVID-19 to the seasonal flu vaccine.

An April 16 [article](#) shared on social media carries the headline "New study: The flu vaccine Is 'significantly associated' with an increased risk of coronavirus."

Facebook flagged this story as part of its efforts to combat false news and misinformation on Facebook's News Feed. (Read more about our [partnership with Facebook](#).)

The article, from a self-described "conscious media" [website](#), mainly cites a 2019 [study](#) from the U.S. Armed Forces Health Surveillance Branch that was published in the journal Vaccine [in 2020](#). The study focused on Department of Defense personnel, who have high rates of flu vaccination, and examined whether being



-posts/2017-18-flu-season-study-does-not-include-covid-19/



The Poynter Institute

surveillance system that was published in the journal *Vaccine* in 2020. The study focused on Department of Defense personnel, who have high rates of flu vaccination, and examined whether being vaccinated for a seasonal flu could make someone more or less likely to catch other respiratory viruses.

But the study found no connection between the flu shot and an increased risk of contracting COVID-19.

## FEATURED FACT-CHECK

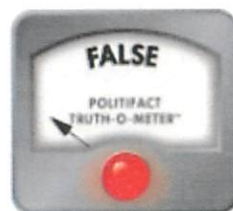


### Viral image

stated on September 19, 2020 in a Facebook post

**"Guess who is the marketing CEO of Zoom? Pelosi's daughter/Newsome's cousin."**

By Ciara O'Rourke • September 23, 2020



That's because the U.S. Armed Forces study's data was referring to seasonal common coronaviruses in 2017-18, not the new coronavirus that causes COVID-19. (There are **seven types of coronaviruses** that can infect humans, of which the COVID-19-causing SARS-CoV-2 is one.) This was clarified in the full article,



coronaviruses that can infect humans, of which the COVID-19-causing SARS-CoV-2 is one.) This was clarified in the full article, but is ambiguous in the headline.

What's more, Richard Watanabe, a preventative medicine professor at USC, told PolitiFact that the article doesn't really provide "strong support for anything they are claiming" since the study found little correlation between the flu vaccine and such viruses.

Even with regard to coronaviruses that predated SARS-CoV-2, the U.S. Armed Forces study concluded that further research is needed, as "the overall results of the study showed little to no evidence supporting the association of virus interference and influenza vaccination." The study's data had mixed results for individual respiratory viruses and found that vaccinated individuals were "more likely to have no pathogen detected and reduced risk of influenza when compared to unvaccinated individuals."

The article also leaves out parts of the study that question the data linking coronavirus cases to the influenza vaccine. For instance, the U.S. Armed Forces study referenced a study from 2013 that had similar results except there was "no association between influenza vaccination and RSV, adenovirus, human metapneumovirus, rhinovirus or coronavirus."

Edward Belongia, an infectious disease epidemiologist who worked on the 2013 study, explained to [FactCheck.org](https://www.factcheck.org) that there is little



sts/2017-18-flu-season-study-does-not-include-covid-19/



Edward Belongia, an infectious disease epidemiologist who worked on the 2013 study, explained to [FactCheck.org](#) that there is little scientific data to support the speculative theory of the flu vaccine increasing the risk of other respiratory viruses.

While this article did specify that the U.S. Armed Forces study was testing common coronaviruses and not COVID-19, the headline was ambiguous and misleading. We rate this headline False.



### Our Sources

PolitiFact, [No, the coronavirus vaccines in development haven't killed children](#), July 1, 2020

PolitiFact, [Blog post wrong on what Bill Gates said about COVID-19 vaccine](#), May 20, 2020

PolitiFact, [No, COVID-19 vaccine wouldn't come with a 'mark'](#), May 22, 2020

PolitiFact, [Flu shots aren't causing false positive COVID-19 tests](#), May 21, 2020

Collective Evolution, [New Study: The Flu Vaccine Is "Significantly Associated" With An Increased Risk of Coronavirus](#), April 16, 2020

Collective Evolution, [About Us](#), accessed on July 14, 2020

ok-posts/2017-18-flu-season-study-does-not-include-covid-19/



[An Increased Risk of Coronavirus](#), April 16, 2020

Collective Evolution, [About Us](#), accessed on July 14, 2020

Vaccine, [Influenza vaccination and respiratory virus interference among Department of Defense personnel during the 2017–2018 influenza season](#), June 19, 2020

Elsevier, [Vaccine](#), accessed on July 15, 2020

Clinical Infectious Diseases, [Influenza Vaccination Is Not Associated With Detection of Noninfluenza Respiratory Viruses in Seasonal Studies of Influenza Vaccine Effectiveness](#), June 6, 2013

Factcheck.org, [No Evidence That Flu Shot Increases Risk of COVID-19](#), April 27, 2020

U.S. Centers for Disease Control and Prevention, [Human Coronavirus Types](#), accessed July 15, 2020

Email exchange with Richard M. Watanabe, preventive medicine and physiology & biophysics professor, Keck School of Medicine of USC, July 15, 2020

## **Browse the Truth-O-Meter**

**MORE BY EMILY VENEZKY**

# EXHIBIT B



...com/2020/04/16/study-the-flu-vaccine-is-significantly-associated-with-an-increased-risk-of-coronaviruses-not-covid19/



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AWARENESS

# Study: The Flu Vaccine Is “Significantly Associated” With An Increased Risk of Coronaviruses – Not COVID-19



Published 6 months ago on April 16, 2020

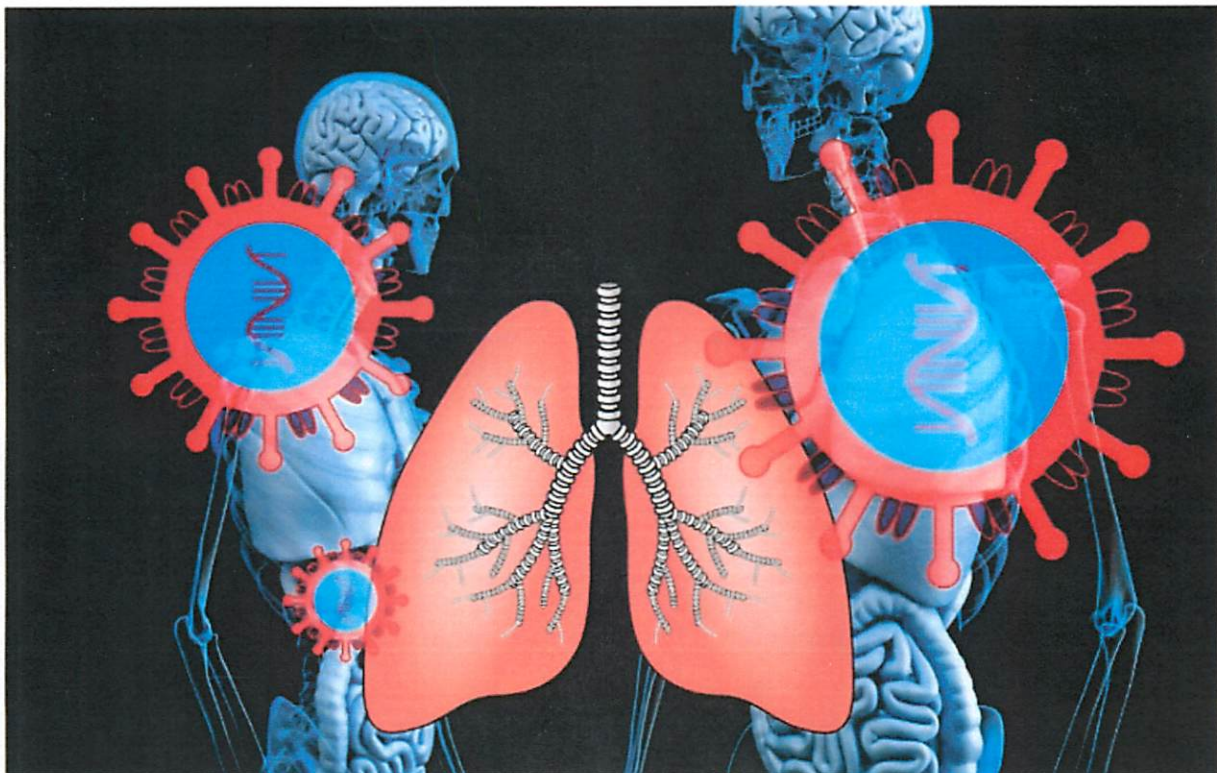
By Arjun Walia



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1.com/2020/04/16/study-the-flu-vaccine-is-significantly-associated-with-an-increased-risk-of-coronaviruses-not-covid19/



## Study: The Flu Vaccine Is "Significantly Associated" With An Increased Risk of Coronavi



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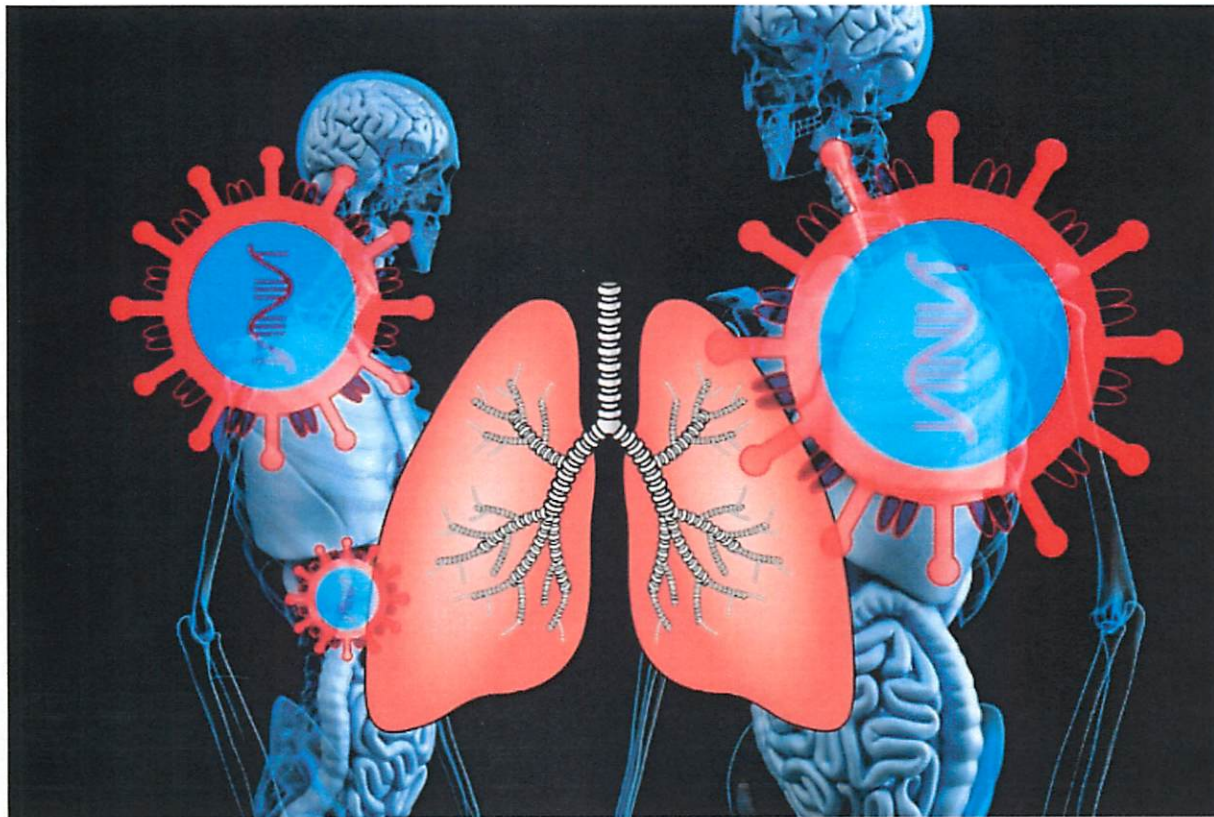
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### IN BRIEF

- **The Facts:** A study published in the journal Vaccine found a greater risk of contracting coronavirus among individuals in the study who received the influenza vaccine. This does not refer to COVID 19, but to already circulating coronaviruses.
- **Reflect On:** Are vaccines completely and 100 percent safe for everybody? Is there a large minority who are more susceptible to vaccine injury and complications



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**Reflect On:** Are vaccines completely and 100 percent safe for everybody? Is there a large minority who are more susceptible to vaccine injury and complications compared to others?

Greg. G Wolff, an Epidemiologist with the Armed Forces Health Surveillance Branch recently published a study in the *Journal Vaccine* titled, *Influenza vaccination and respiratory virus interference among Department of Defense personnel during the 2017–2018 influenza season*. The study examined virus interference in a Department of Defense population, this refers to the increased risk of other respiratory viruses as a result of, in this case, the influenza vaccine. The study found that virus interference varied among vaccinated individuals for individual respiratory viruses, and found that for coronaviruses in particular, in this study, those who had been vaccinated with the flu vaccine had a **36 percent higher risk** of contracting them. This doesn't apply to the new coronavirus, but instead already existing circulating coronaviruses.

The study also states that "The overall results of the study showed little to no evidence supporting the association of virus interference and influenza vaccination" and that more research is needed.

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As far as Covid19, it's a coronavirus but it has not been studied, obviously, so as of now it's impossible to say that the flu shot would do this for Covid-19.

The study compared the vaccination status of

From the Web revcontent

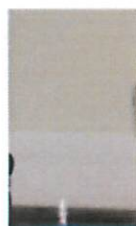


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The study compared the vaccination status of more than two thousand people with non-influenza respiratory viruses to more than three thousand people with pan-negative results.

The vaccination status of more than three thousand cases of influenza were compared to three different control groups, and appropriate adjustments were made.

The study points out that recently published studies have "described the phenomenon of vaccine-associated virus interference; that is, vaccinated individuals may be at increased risk for other respiratory viruses because they do not receive the non-specific immunity associated with natural infection." The study goes on to emphasize that "There has been limited evidence that the influenza vaccine may actually be associated with the virus interference process. Other studies have found no association between influenza vaccination and increased respiratory virus risk."

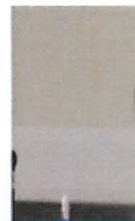
Other studies have found no association between the flu vaccine and an increased risk for other respiratory viruses, but when looking specifically at coronavirus, Wolff's study found that "Vaccine derived virus interference was significantly associated with coronavirus and human metapneumovirus; however, significant protection with vaccination was associated not only with most influenza viruses, but also parainfluenza, RSV, and non-influenza virus coinfections."

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## Study: The Flu Vaccine Is "Significantly Associated" With An Increased Risk of Coronavi Fort Lauderdale, Florida Launches New Policy For Cars Used Less Than 49 Miles/Day

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Metapneumovirus causes both upper and lower respiratory disease in all ages.

Out of the 6120 people in the study with respiratory viruses other than influenza, those who received an influenza vaccine actually had a decreased risk of having other respiratory pathogens compared to the unvaccinated group. Again, it's important to be specific with what respiratory pathogens one may have an increased risk of contracting as a result of being vaccinated against influenza. This is why for some pathogens, no increased risk was observed, and in some cases a decreased risk was observed. But again, specifically for coronavirus, a significant increased risk was observed.

With regards to the coronavirus and human metapneumovirus, the data in this study showed an increased risk of contraction within vaccinated individuals to be 36 percent greater.

*The laboratory data in our study showed increased odds of coronavirus and human metapneumovirus in individuals receiving influenza vaccination...In our disease specific investigation, virus interference trends were noticed for coronavirus and human metapneumovirus...Examining non-influenza viruses specifically, the odds of both coronavirus and human metapneumovirus in vaccinated individuals were **significantly higher when compared to unvaccinated individuals (OR=1.36 and 1.51, respectively)***

The study concluded that:

*Receipt of influenza vaccination was not associated with virus interference among our population. Examining virus interference by specific respiratory viruses showed mixed results. Vaccine derived virus interference was*



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among our population. Examining virus interference by specific respiratory viruses showed mixed results. Vaccine derived virus interference was significantly associated with coronavirus and human metapneumovirus; however, significant protection with vaccination was associated not only with most influenza viruses, but also parainfluenza, RSV, and non-influenza virus coinfections.

But overall, the results showed "little to no evidence supporting the association of virus interference and influenza vaccination."

Furthermore, a [study published](#) in the same journal, *Vaccine*, found that "Among children there was an increase in the hazard of ARI (acute respiratory illness) caused by non-influenza respiratory pathogens post-influenza vaccination compared to unvaccinated children during the same period...Patient perceptions of illness following influenza vaccination may be supported."

The Department of Defense has a Global Respiratory Pathogen Surveillance Program (DoDGRS), it's a DoD-wide program established by the Global Emerging Infections Surveillance and Response System (GEIS). This is how Wolff was able to gather all of his data with regards to who had been vaccinated with the influenza virus, and what other illnesses they experienced. The Defense Health Agency/Armed Forces Health Surveillance Branch - Air Force Satellite Cell (DHA/AFHSB - AF) and United States Air Force School of Aerospace Medicine (USAFSAM) also provided access to the data.

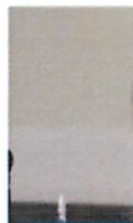
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## Study: The Flu Vaccine Is "Significantly Associated" With An Increased Risk of Coronavi


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### Further Thoughts About Flu Vaccination

According to the study above, "significant protection with vaccination was associated not only with most influenza viruses, but also parainfluenza, RSV, and non-influenza virus coinfections." So, it does point out the benefits of influenza and suggests it's effective. It also sites multiple studies that show it's effective as well.

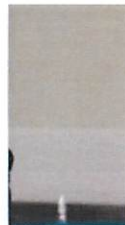
But there is conflicting research on the the flu vaccine and its effectiveness against influenza. For example, Dr. Peter Doshi is an associate editor at *The BMJ* (*British Medical Journal*) and also an assistant professor of pharmaceutical health services research at the University of Maryland School of Pharmacy, [published a paper in \*The BMJ\* titled "Influenza: Marketing Vaccines By Marketing Disease."](#) In it, he points out that the CDC pledges "to base all public health decisions on the highest quality of scientific data, openly and objectively derived," and how this isn't the case when it comes to the flu vaccine and its marketing. He stresses that "the vaccine may be less beneficial and less safe than has been claimed, and that "the threat of influenza seems to be overstated."

He goes on to state:

*But perhaps the cleverest aspect of the influenza marketing strategy surrounds the claim that "flu" and "influenza" are the same. The distinction seems subtle, and purely semantic. But general lack of awareness of the difference might be the primary reason few people realize that even the ideal influenza vaccine, matched perfectly to circulating strains of wild influenza and capable of stopping all influenza viruses, can only deal with a small part of the "flu" problem because most "flu" appears to have nothing to do with influenza. Every year, hundreds of thousands of respiratory specimens are tested across the US. Of those tested, on average 16% are found to be influenza positive. (fig 2).<sup>4</sup> All influenza is "flu," but only one in six*



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*specimens are tested across the US. Of those tested, on average 16% are found to be influenza positive. (fig 2). All influenza is "flu," but only one in six "flus" might be influenza. It's no wonder so many people feel that "flu shots" don't work: for most flus, they can't.*

Dr. Alvin Moss, MD and professor at the West Virginia University School of Medicine emphasizes [in this video](#):

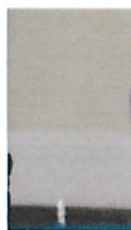
*The flu vaccine happens to be the vaccine that causes the most injury in this country. The vaccine injury compensation program, 40 percent of all vaccinations in this country are flu shots, but 60 percent of all the compensations are for the flu vaccine. So a disproportionate number of vaccine related injuries are the flu shot. I think many of you it's been recommended to you that you get the flu shot, I don't know if you're aware of the fact, the CDC statistics are, that every year they look at vaccine effectiveness, for this particular year the vaccine effectiveness is 48 percent, so that means it's not highly effective. It's not even all that effective, if you look at the scientific literature...the evidence to support giving the flu vaccine is moderate to weak. It is not strong evidence. They say the evidence to support giving the flu vaccine to people over the age of 65 is not there, it's inconclusive. So a lot of the things we've been told as Americans about vaccinations are not really based on the science. ([source](#))*

The National Childhood Vaccine Injury (NCVIA) has already paid out approximately \$4 billion to compensate families of vaccine injured children. As astronomical as the monetary awards are, they're even more alarming considering HHS claims that only an [estimated 1% of vaccine injuries are even reported](#) to the [Vaccine Adverse Events Reporting System](#) (VAERS).

Something to think about. The information in this article shows that it's ok to question, and that the science on vaccine safety is not 'settled.' We must ask ourselves, why are there terms like 'anti-vax' and why does big media constantly try



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something to think about. The information in this article shows that it's OK to question, and that the science on vaccine safety is not 'settled.' We must ask ourselves, why are there terms like 'anti-vax' and why does big media constantly try to ridicule any information that paints vaccines in a concerning light? Surely the questioning of vaccine safety is in the best interest of all parties involved?

At the end of the day, it's not about who is right and who is wrong, and it's not about one side or the other. It's about coming together in a peaceful manner and understanding the concerns that are being raised, and dealing with them, addressing, and responding to them appropriately. We cannot hold hate in our own being if we want to rid the world of it, and we cannot use ridicule and judgement against, otherwise we are simply perpetuating what we are trying to get rid of. Operating from a place of peace is essential, it helps to see things in a clearer way, and it's something that needs to become a necessity for all parties involved, whether you support vaccination or do not.

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